

SENATE STAFF ANALYSIS AND ECONOMIC IMPACT STATEMENT

(This document is based on the provisions contained in the legislation as of the latest date listed below.)

BILL: SB 2224

SPONSOR: Senator Villalobos

SUBJECT: Securities and Financial Transactions

DATE: March 3, 2004

REVISED: _____

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	<u>Brown</u>	<u>Lang</u>	<u>JU</u>	<u>Favorable</u>
2.	_____	_____	<u>BI</u>	_____
3.	_____	_____	<u>ACJ</u>	_____
4.	_____	_____	<u>AP</u>	_____
5.	_____	_____	_____	_____
6.	_____	_____	_____	_____

I. Summary:

This bill grants direct authority to the Office of Statewide Prosecution (“OSP”) and the Office of the Attorney General (“OAG”) to initiate and pursue investigations for securities transactions fraud, and to prosecute for violations.

This bill authorizes the Attorney General to seek injunctive relief and restitution, and increases the maximum allowable civil and criminal penalties.

Under this bill, the subject matter jurisdiction of the statewide grand jury is broadened to include securities transactions and money laundering cases.

This bill substantially amends s. 16.56, 517.191, and s. 905.34 of the Florida Statutes.

II. Present Situation:

Securities Transactions

Chapter 517, F.S., is the Florida Securities and Investor Protection Act. The Financial Services Commission (“Commission”) through its Office of Financial Regulation (“OFR”), has complete authority over civil enforcement of the Act, under s. 517.03, F.S.

The OFR is authorized by statute to investigate and seek injunctive relief and other remedies, including restitution. s. 517.191, F.S. The OFR is authorized to issue and serve cease and desist orders upon belief that any person is violating any rule or order promulgated by the Commission or OFR, and to impose and collect administrative fines. s. 517.221, F.S. Violations of criminal provisions of the Act may be prosecuted by the state attorney with jurisdiction or by the statewide prosecutor if the crime is multi-jurisdictional, at the direction or request of the OFR.

It appears that the only cases where the AG can initiate an investigation on its own for securities violations, without a request by the OFR, is in cases of securities fraud that also violate the Racketeer Influenced and Corrupt Organization Act (“RICO”), s. 895.02(1)(a)8, F.S. This is contained in provisions of the RICO Act that identify the Department of Legal Affairs as having investigative authority under this statute.¹

The OFR is authorized to impose and collect administrative fines of up to \$5,000 against a person who is found to have violated any provision of Chapter 517, F.S., any rule or order of the OFR, or any agreement entered into between the person and the OFR. s. 517.221 (3), F.S.

The Anti-Fraud Trust Fund is funded by collected fines, and collection of costs of investigation and prosecution that may be assessed by courts or through a stipulated consent order. s. 517.302 (3), F.S. When authorized by appropriation, the funds in the Anti-Fraud Trust Fund must be used for investigation and prosecution of administrative, civil, and criminal actions arising under Chapter 517, F.S. The OFR indicates that administrative fines are the primary source of income for the Trust Fund.

The chart below sets out total deposits made into the Anti-Fraud Trust Fund for the previous four fiscal years:

Fiscal Year	Total Deposits
2000-2001	\$348,000
2001-2002	\$288,000
2002-2003	\$215,882
2003-2004, To Date	\$104,931

From FY 2002-2003, the amount initially deposited was actually \$2,878,442 but \$2,662,560 was immediately transferred out and redeposited into the Working Capital Trust Fund. This amount was due to an atypically large fine collected from a national case.² According to the OFR, the primary expenditure of the Trust Fund is on payments for expert witness fees, forensic accountants and receivers.

The following activities are regulated by Chapter 517, F.S.: operating boiler rooms to solicit members of the public by telephone, rendering advice in the context of the sale or purchase of any investment or security, and the actual issuing and selling of securities. A single violation of any of the criminal provisions of Chapter 517, F.S., including s. 517.275, s. 517.301, s. 517.311, and s. 517.312, F.S.,³ constitutes a third degree felony with a Level 1 offense severity ranking, punishable by a term of imprisonment of up to five years. s. 775.082(3)(d), F.S.

¹ See s. 895.02 (7), s. 895.06(1), s. 895.05(9) and s. 895.07 (1) and (2), F.S.

² The ten firms charged in this case agreed to pay a total of \$875 million nationally in disgorgement and penalties. The historically notable settlement included individual penalties that were some of the highest ever imposed in civil enforcement actions under the securities laws.

³ See s. 517.275, F.S., relating to commodities violations regulated federally through the Federal Commodity Exchange Act, 7 U.S.C. ss.1 et seq.; s. 517.301, F.S., relating to fraudulent transactions; s. 517.311, F.S., relating to false representations in

Money Laundering

Chapter 896 constitutes the Florida Money Laundering Act. The following actions are unlawful:

- Knowing that property involved in a financial transaction represents proceeds of unlawful activity, to conduct or attempt to conduct a financial transaction involving proceeds of specified unlawful activity with intent to promote specified unlawful activity, or knowing that the transaction is designed to conceal the nature, location, source, ownership, or control of proceeds of specified unlawful activity; or to avoid a transaction reporting requirement or money transmitters' registration requirement under state law.
- To transport or attempt to transport a monetary instrument or funds with intent to promote specified unlawful activity, or knowing that the monetary instrument or funds involved in the transportation represent proceeds of unlawful activity and knowing that such transportation is designed to conceal the nature, location, source, ownership, or control of the proceeds of specified unlawful activity or to avoid a transaction reporting requirement or money transmitters' registration requirement under state law.
- To conduct or attempt to conduct a financial transaction which involves property or proceeds which an investigative or law enforcement officer represents as being derived from, or as being used to conduct or facilitate, specified unlawful activity, when the person's conduct or attempted conduct is undertaken with intent to promote specified unlawful activity; or to conceal the nature, location, source, ownership, or control of proceeds or property believed to be the proceeds of specified unlawful activity, or to avoid a transaction reporting requirement under state law.⁴

Degrees of criminal violations vary based on the amount of the financial transactions, and range from first degree felonies to third degree felonies.⁵ A violator can also be fined up to \$250,000 or twice the value of the financial transactions, whichever is greater, or more for repeat violations.⁶ A civil penalty is also authorized, of up to \$25,000, or the value of the financial transactions, whichever is greater.⁷

Office of Statewide Prosecution

The Office of Statewide Prosecution was created by constitutional amendment approved by Florida voters in 1986. Article IV, s. 4 of the Florida Constitution, and s. 16.56, F.S., together provide the jurisdiction and authority of the OSP. The OSP is housed within the Department of Legal Affairs. The Statewide Prosecutor is appointed by the Attorney General, and referred by the Judicial Nominating Commission.

The mission of the OSP is to investigate and prosecute multi-circuit organized crime, and to aid other law enforcement in their investigations of organized crime. The OSP only has jurisdiction

issuing or selling securities; and s. 517.312, F.S., providing for rescission and recovery of damages for fraudulent transactions, false representations and unlawful boiler room practices. s. 517.021 (3), F.S.

⁴ s. 896.101(3), F.S.

⁵ s. 896.101(5), F.S.

⁶ s. 896.101(6), F.S.

⁷ s. 896.101(7), F.S.

where the crime has occurred in more than one judicial circuit or is part of a conspiracy in more than one judicial circuit.⁸

Section 16.56, F.S., governs the authority of the OSP. The OSP is authorized to investigate and prosecute the crimes of bribery, burglary, carjacking, home-invasion robbery, usury, extortion, gambling, kidnapping, larceny, murder, prostitution, perjury, robbery, narcotics, RICO violations, Anti-Fencing Act violations, Anti-Trust Act violations, certain computer-related crimes, fraud, and certain violations of the Florida Drug and Cosmetic Act.⁹

Many fraudulent acts take place in a multi-circuit manner. Currently, the OFR and federal law enforcement have jurisdiction over investigating unfair and deceptive trade practice cases. The Office of Statewide Prosecution is generally limited to investigating these sorts of cases only where they can also show that these cases violate RICO, the Anti-Fencing Act, and the Florida Antitrust Act.

Statewide Grand Jury Powers and Duties

Current law limits the subject matter jurisdiction of the statewide grand jury to crimes relating to bribery, burglary, carjacking, home-invasion robbery, usury, extortion, gambling, kidnapping, larceny, murder, prostitution, perjury, robbery, narcotics, RICO violations, Anti-Fencing Act violations, Anti-Trust Act violations, certain computer-related crimes, fraud, and certain violations of the Florida Drug and Cosmetic Act.¹⁰

The statewide grand jury is granted broad powers to return indictments and presentations regardless of the county or circuit where the crime was committed or triable.¹¹

III. Effect of Proposed Changes:

This bill authorizes the Office of Statewide Prosecution to investigate and prosecute chapter 517 securities transaction and chapter 896 money laundering violations, and the Office of the Attorney General to investigate and prosecute chapter 517 securities transaction offenses, to obtain injunctive relief and restitution. This bill allows for recovery by the AG of up to \$10,000 for each violation, in addition to costs and attorney's fees.

This bill expands the authority of the AG and the OSP to directly pursue fraudulent claims, to co-enforce fraud and money laundering with the OFR, but does not extend the regulatory authority currently delegated to the OFR.

Under this bill, the subject matter jurisdiction of the statewide grand jury is broadened to include hearing chapter 517 and chapter 896 violations.

⁸ See the OSP web page at www.myfloridalegal.com/swp

⁹ s. 16.56(1)(a), F.S.

¹⁰ s. 905.34(1) through (9), F.S.

¹¹ s. 905.34(9), F.S.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

None.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

D. None.

V. Economic Impact and Fiscal Note:

A. Tax/Fee Issues:

None.

B. Private Sector Impact:

C. Government Sector Impact:

This bill is expected to have an indeterminate impact on revenues and expenditures, and there may be a slight impact on the Economic Crimes Division of the Department of Legal Affairs, contingent on any increase in cases.

VI. Technical Deficiencies:

Under the rules of statutory construction, a section of law that cross-references another section or portion thereof that is subsequently amended does not incorporate those amendments unless the section containing the cross-reference is reenacted (republished). Otherwise, the statutory cross-reference is linked to the version of the section that existed prior to the amendment. Section 16.56, F.S., as revised by this bill, is cross-referenced in s. 92.605, F.S., which provides for a law enforcement officer to seek certain court orders and subpoenas. Section 16.56, F.S., is also cross-referenced in s. 896.101, F.S., which relates to the state money laundering act, and the issuance of certain subpoenas. These sections may need to be republished in order to incorporate the amendments to s. 16.56, F.S.

VII. Related Issues:

None.

VIII. Amendments:

None.